IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 1667 of 2005

HONOURABLE MR.JUSTICE R.P.DHOLAKIA

HONOURABLE MR.JUSTICE KS JHAVERI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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MAFATBHAI KHANABHAI VANKAR - Appellant(s)
Versus
STATE OF GUJARAT - Opponent(s)

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Appearance :
THROUGH JAIL for Appellant(s) : 1,MRS SHILPA R SHAH for Appellant
MR K.P. RAVAL, APP, for Opponent

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CORAM : HONOURABLE MR.JUSTICE R.P.DHOLAKIA

and

HONOURABLE MR.JUSTICE KS JHAVERI

Date : 10/08/2007

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE R.P.DHOLAKIA)

01. This appeal is directed against the judgement and order of conviction and sentence dated 23rd February 2005 passed by learned Additional Sessions Judge, 5th Fast Track Court, Panchmahals at Godhra in Sessions Case No.137 of 2003 whereby the appellant was convicted for offence punishable under section 302 of IPC and sentenced to life imprisonment and fine of Rs.200/- in default to undergo rigorous imprisonment for three months and for offence punishable under section 307 of IPC he was sentenced to undergo rigorous imprisonment for five years and fine of Rs.200/-, in default, further to undergo rigorous imprisonment for three months. Both the sentences were ordered to run concurrently. The appellant was also given the benefit of set off.

02. The prosecution case, as emerging from the record, is as under:

03. The appellant-accused had married to one Jashiben, daughter of Ramabhai Dhulabhai Vanker of village Guneli about 15 years back from the date of incident. Out of the said wedlock, they had three children; the elder son was Bhavesh, aged 14 years, second child was daughter Mittal of 11 years and the youngest child was son Sunil of 9 years. About

prior to one year from the date of the incident, the appellant and Jashiben had developed strained relationship and there were quarrels between them frequently. According to the prosecution the appellant was harbouring a suspicion in his mind that his wife had illicit relationship with some one and that he was not the real father of the three children.

04. At the mid night between 24th and 25th February 2003 at about 1.30 am the appellant got up and started quarrelling with his wife Jashiben saying that he was not the father of the three children, that one Vijaysinh Girvatsinh is the father of the children, he came to know the truth otherwise he would have maintained the children of some one else. During the quarrelling elder son Bhavesh got up. The appellant became furious and he took an axe and gave blows to Bhavesh and also to Jashiben. The accused also inflicted axe blows upon the other two children Mittal and Sunil. As a result of this Mittal and Sunil died on the cot itself and injured wife Jashiben and elder son Bhavesh sustained serious injuries, who were lying in a pool of blood in unconscious condition.

05. The appellant, thereafter, left the scene of offence by closing the door from outside. When Jashiben regained consciousness, she reached near the door, but the door was closed from outside. At that time one

Ambalalkaka came there. On hearing the shouts of Jashiben, he opened the door and saw the injured. He found that Mittal and Sunil had died and Jashiben and Bhavesh were bleeding. He informed about the same to one Devabhai Ramabhai, Parmabhai Dahyabhai and Kalidas Bhurabhai. They all took the injured Jashiben and Bhavesh to Kothamba hospital, but after giving primary treatment they were referred to Civil Hospital, Godhra.

06. Kalidasbhai Dhulabhai Vankar of Thanasavali village went to Kothamba Police Station on 25.02.2003 and he has given the complaint which was taken down by P.I. Shri K.G. Patel of Kothamba Police Station. The same was numbered as C.R. No.I 20 of 2003 for the offence under section 302. As it was a serious offence of murder, he himself has taken over the investigation and kept the FIR in the investigation file. He has also informed about the incident to his superior officer and thereafter went to the scene of offence at Thanasavali, more particularly the resident of Mafatbhai Kanabhai Vankar. At the scene of offence he has seen two dead bodies and therefore he has called panchas and inquest panchnama has been prepared in the presence of Panchas. He has thereafter prepared a Yadi for the purpose of sending the dead bodies to Civil Hospital, Kothamba. He has prepared panchnama of scene of offence in the presence of two panchas and collected muddamal

articles form the scene of offence and sent for FSL report. He has also recorded statements of various witnesses. During the investigation he came to know that Bhavesh, son of appellant-accused and Jashiben, wife of appellant accused were injuried and therefore they have been shifted to hospital. He has also come to know that later on Bhavesh has succumbed to the injuries. He thereafter went to Civil Hospital, Godhra and recorded statement of Joshiben wherein even the superior officers were also present. In the meanwhile Godra Control Police has arrested the appellant-accused and handed over him to the investigation officer. The investigating officer has prepared the arrest panchnama, seized the clothes of the accused worn by him at the time of incident and prepared panchmana. During the course of interrogation the appellant-accsed has shown his willingness to produce the muddamal weapon and therefore he has called two panchas to police station wherein primary panchnama has been prepared. Thereafter the appellant-accused, panchas and other police personnels went in a police van to Tanasavali as directed by accused-appellant and the appellant-accused took them to his house and he has taken out the muddamal weapon axe from the backyard vegetable garden. The said muddamal weapon has been seized in the presence of panchas and panchnama to that effect has been made. Thereafter he has collected medical case papers of Jashiben and also postmortem notes and death certificates of all the three victims and kept

in investigation file. Muddamals were sent to FSL with forwarding letter and on receipt of report along with serological report, the same has been kept in the investigation file. He has also made arrangements for preparing the map of the scene of offence on the basis of panchnama through Circle Inspector and also kept in the file. The police has thereafter filed chargesheet against the appellant-accused in the Court of learned JMFC, Lunawada. As the offence against the appellant-accused is exclusively triable by the Sessions Court, learned JMFC, Lunawada has committed the same to the Court of Sessions, Panchmahals, Godhra for the purpose of disposing of the same on merits.

07. On production of the appellant-accused, learned Additional Sessions Judge has framed charge against appellant-accused and the accused has pleaded not guilty and prayed for trial. To prove the guilt against the accused the prosecution has examined 13 witnesses viz. (1)Exh.15: PW1 Dr. Vijaykumar Chaudhri, Medical Officer, C.H.C. Kothamba. (2) Exh.20: P.W2 Dr. Shashikant Bansilal Nagori, Medical officer, C.H. Godhra (3) Exh.24: PW3 Jashiben Mafatbhai – injured wife of the accused (4) Exh.72-PW4, Ambalal Dhulabhai Patel, the first man to reach after the incident – Hostile witness (5) Exh.73-PW5 Kalidas Dhulabhai -complainant (6) Exh.75-PW6 Gemabhai Ramabhai Vankar – Panch witness – scene of offence, (7) Exh.77 – PW7

– Parvatbhai Gulabbhai – Panch of Discovery panchnama, (8) Exh.78-PW8 Kalabhai Arjunbhai Solanki – panch witness of discovery panchnama (9) Exh.79-PW10 – Dr. Rameshchandra Kodarji Chauhan – M.O. Godhra, who treated the injured (10) Exh.85-PW11 Parmabbhai Dahyabhai Vankar – local resident of the village, (11) Exh.86-PW 12-Devabhai Ramabhai Vankar – cousin of the accused (12) Exh.87-PW 13 Kiritkumar Gokaldas Patel, PSI-I.O and (13) Exh.106-DW1 Pravinchandra Kanchanlal Soni, clerk.

08. The prosecution has produced as many as 35 documentary evidence viz. (1) Exh.111 – Birth certificate of Jashiben, (2) Exh.112: Attempt certificate for S.S.S. Exa. (Jashiben), (3) Exh.113: Notice issued by Jashiben to father of accused, (4) Exh.114: Reply to the notice by father of the accused, (5) Exh.107: Appointment letter for Jashiben on scarcity work dated 16.5.200, (6) Exh.108: Relieving order from scarcity work dt.12-7-2000, (7) Exh.17: Case papers regarding treatment of Jahsiben at Kothamba, (8) Exh.16: Case papers of treatment of Bhavesh at Kothamba, (9) Exh.13: Map prepared by Circle Officer, Kothamba – scene of offence (10) Exh.84: Certificate of treatment of Jashiben, Civil Hospital,Godhra, (11) Exh.23: Medico-legal case intimation to police by Medical officer C.H.C. Hospital, (12) Exh.48: Notice by Jashiben to Registrar, Lunawada dt.23.9.2003,

(13) Exh.95 FIR by Kalidas Dhulabhai, (14) Exh.74:Complaint by Kalidas Dhulabhai, (15) Exh.76: Scene of offence – panchnama, (16) Exh.27 Inquest Report – boy – Sunil, (17) Exh.28:Inquest report – girl Mittal (18) Exh.30: Inquest report – boy Bhavesh, (19) Exh.29: Recovery of cloths of Bhavesh, Panchnama, (20) Exh.31:Recovery of cloths of Mittalben – Panchnama, (21) Exh.88:Discovery of weapon- panchnama, (22) Exh.21: P.M. Report of Bhavesh, (23) Exh.18: P.M. Report of Mittalben, (24) Exh.19:P.M. Report of Sunil, (25) Exh.89: Forwarding letter to F.S.L, (26) Exh.91:Acknowledgement by FSL, (27)Exh.90: List of articles sent to FSL (28) Exh.92 Forwarding letter of FSL to police officer,Kothamba (29) Exh.93 Report of FSL regarding analysis (30) Exh.94 Report of FSL (Serology Department) (31) Exh.126:Letter produced at Exh.44/1, (32) Exh.127: Letter produced at Exh.46/1, (33) Exh.128:Letter produced at Exh.46/2, (34) Exh.129: Letter produced at Exh.46/3 AND (35) Exh.130: Note regarding authorities relied upon by defence.

09. On submission of closing pursis by the learned APP, learned Additional Sessions Judge has recorded the further statement of accused under section 313 of CrPC wherein the accused has chosen not to step into witness box to give evidence on oath and therefore the learned

Sessions Judge has called for the defence witness DW1. Thereafter, after hearing the learned advocate for the parties the learned Sessions Judge has delivered the aforesaid judgement whereby he has convicted and sentenced the appellant-accused as stated hereinabove.

10. Record and Proceedings of the case was called for and the same was made available to the learned Advocate for the appellant for perusal. Ms Shilpa Shah, learned Advocate appearing for the appellant submitted that the appellant was not present at the scene of offence and in fact Jashiben and her paramour had eliminated the children. She submitted that the evidence of Jashiben is not believable. She further submitted that the investigation is defective and that the discovery panchnama has not been proved and the panch witness has turned hostile. She therefore submitted that the case against the appellant has not been proved and therefore he is required to be acquitted.

11. As stated hereinabove, the prosecution has examined various witnesses. Out of them injured Jashiben, mother of three victims and wife of appellant-accused is the star witness. The prosecution has mainly relied upon the evidence of this witness Jashiben (PW3-Exh.24). In her deposition she has stated that on the day of the incident she had gone to her parent's house and had returned at about 4 pm with Sunil and Mittal. Bhavesh had returned from Lunawada. The appellant reached

the house at about 7 pm and they took dinner and retired to bed at about 9 pm. Jashiben and Sunil were on the same cot and Mittalben and Bhavesh were sleeping on another cot. The appellant was also sleeping in the same room and he got up at about 1.30 am mid night and started arguments with Jashiben. He stated that he was not the father of the three children. He was having a suspicion that his wife had some illicit relationship with someone and on this point he started quarreling with Jashiben. She deposed that during this time Bhavesh got up and appellant inflicted axe blows on his head by saying that if Kanabhai Punjabhai had not told the truth, he would have maintained the children of another person for the entire life. Jashiben intervened and she was also given axe blows on her head one after the other and she fell down. During this time she saw that the appellant was inflicting axe blows to Mittalben and Sunil. Thereafter she lost consciousness.

12. In the morning she regained consciousness and found that both Sunil and Mittalben were dead. Bhavesh was struggling for life. She found that her husband was not in the house and the doors were closed from outside and therefore she shouted for help. On hearing the same Ambalalkaka had opened the door from outside and Jashiben told him the entire story. Ambalalkaka went to her relatives Kalidas Bhurabhai, Devabhai Ramabhai and Parmabhai Dahyabhai who came to the scene of

offence and they took Jashiben and Bhavesh to Kathamba Hospital for treatment. After primary treatment they were referred to Civil Hospital, Godhra. During transportation Bhavesh died. The police recorded the statement of Jashiben at Godhra.

13. Jashiben further deposed that since last one year the appellant was doubting her and quarrelling on the issue of her alleged illicit relationship. She had stated that the appellant had given blows to her and to her children by weapon axe at Article No.21. She has identified the weapon in the court. This witness has been thoroughly cross-examined by the learned counsel for the appellant in the Sessions Court, but nothing contrary has come out which has shaken her evidence. It is also required to be noted that her presence in her matrimonial home at the time of incident is natural one and when she received serious injuries with the same weapon, her presence cannot be discarded.

14. The prosecution has also examined Ambalal Patel (PW4) at Exh.72 who has opened the door from outside and he has seen the injured inside the house. Kalidas Dhulabhai, the complainant (Exh.73-PW5), Parmabbhai Dahyabhai Vankar (Exh.85-Exh.11) and Devabhai Ramabhai Vankar (Exh.86-PW12) have supported the prosecution case.

15. In order to support the case of the prosecution, the prosecution has examined Dr. Vijaykuamr Dharogi Chaudhary (PW1-Exh.15). He has categorically stated that Bhavesh has been brought to the hospital on 25.2.2003 at about 8.50 am by his relatives. At that time he was unconscious and he has also given his evidence regarding his physical condition at paragraph 1 of his deposition along with proof of injury. He has also proved the injury certificate at Exh.16. This witness has deposed that his injury was serious one and therefore he had referred him to Civil Hospital, Godhra.

16. For the purpose of proving the aspect of homicidal death and proving the injury on Jashiben, the prosecution has also placed reliance and examined PW2 Dr. Sashikant Basantilal Nagori at Exh.20. He is Medical Officer of Civil Hospital, Godhra. He has carried out the postmortem of deceased Bhavesh. As per his deposition he has found six external marks of injuries and five internal injuries on the body of the deceased. He has given a detailed account regarding the injuries in his deposition at paragraph 4. He has also prepared and proved postmortem note at Exh.21 and categorically deposed that the injury which has been received by the deceased were sufficient enough to cause death of the victim. After seeing the muddamal article at Exh.21 he has categorically deposed that the injuries which have been received by the deceased are

possible by the said weapon.

17. The above witness PW2 has also carried out postmortem of deceased Mittal on 25.2.2003 at 4.10 pm and has also narrated the injuries which she has received which is at paragraph 5. He categorically deposed that all the injuries were ante-motem and there were intermal marks. He has proved the postmortem report at Exh.18. Simultaneously he had also carried out the postmortem of deceased Sunilkumar on the same day and has also narrated the external and internal injuries at paragraph 8 and has proved the postmortem report at Exh.19. On showing the muddamal article axe Exh.21 he stated that the injuries suffered by the deceased are possible by the said muddamal article and they were sufficient enough to cause death of the deceased. Not only that, the prosecution has also produced inquest panchnama of all the three victims by way of Exh.27 to 30 and nothing contrary has come out to shake the evidence of the above witnesses who have proved the death of the deceased as homicidal death. Even the learned Advocate for the appellant has not raised any contention regarding the same.

18. Over and above, the prosecution has also got support from the evidence of Jashiben who is also one of the victims and she has seen the incident. In her evidence she has stated that the appellant-accused has

given axe blows to all her three children and to her and therefore we have no hesitation to hold that this is a homicidal death.

19. It reflects from the oral as well as documentary evidence on record, that the appellant and victim Jashiben are the husband and wife and all the three victims viz. Bhavesh, Mittal and Sunil were born out of their wedlock of 15 years period. It is also proved beyond reasonable doubt that the incident in question has taken place at midnight which reflects from the evidence of the doctor who has performed postmortem of all the three victims, wherein he has found that the food was in semi digested state and on that basis he has categorically deposed that 3-4 hours before the incident, the victims must have taken the food and therefore the incident had taken place at about 1 to 1.30 am. It is also required to be noted that the incident has taken place in the matrimonial house wherein all the three children victims and her husband were staying together and it was night hour and therefore their presence in the house is natural one. Though doubt has been raised that the appellant was not present in the house, evidence on record i.e. in respect of muddamal weapon, bloodstained clothes, etc. proves his presence in the house. Not only that if somebody else had killed the three children and injured the wife, then one who is in the house would not have left the house by closing the door from outside. On the contrary

he would have saved the children and wife and also shouted for help. Therefore conduct of the appellant-accused also shows that he is involved in the alleged commission of offence. As far as Jashiben is concerned, we find that her evidence is trustworthy because she is injured person, the incident in question has taken place in her matrimonial house at night hours and therefore her presence is natural one and if somebody else has killed her three children, then she would not involve her husband, more particularly if we go by the theory of her paramour killing the children. Apart from that such person would not have given blows to Jashiben. Therefore, this theory will also go away.

20. Thus, the oral as well as documentary evidence on record clearly involves the appellant-accused in the crime in question and motive is also established that he had doubt in his mind about his wife which resulted into serious offence wherein he has brutally killed his three children and also tried to kill his wife. It is also evident that with clear-cut intention he came out from the house, closed the door from outside so that at least the injured would not get any help from outside and succumbed to the injuries then and there. Therefore his intention is established from the record. Over and above, the weapon which he has selected is a deadly weapon and blows inflicted by him on the victims are mostly on the vital part of the body, he thereafter left the premises along

with the axe and the same has been hidden in a place where others may not find it. The muddamal weapon has been produced by way of discovery panchnama which has been proved by the prosecution by way of evidence of investigating officer. Merely because panchas have not supported the panchnama, only on that ground the panchnama cannot be discarded. Over and above, the FSL report also supported the version of the prosecution.

21. In view of the above, offence against the appellant, which is a serious one, has been proved beyond reasonable doubt. We are, therefore, of the opinion that this appeal requires to be dismissed at this stage. Hence the appeal is dismissed.

[R.P. DHOLAKIA, J.]

[K.S. JHAVERI, J.]

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